



# UNITED STATES PATENT AND TRADEMARK OFFICE

MD  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/522,160	03/09/2000	Brian K. Estabrook	PROSL-7	2418
7590	12/02/2003		EXAMINER	
Pandiscio & Pandiscio 470 Totten Pond Rd Waltham, MA 02451-1914			THOMPSON, KATHRYN L	
			ART UNIT	PAPER NUMBER
			3763	
			DATE MAILED: 12/02/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/522,160	ESTABROOK ET AL.
Examiner	Art Unit	
Kathryn L Thompson	3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 03 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-22 and 26-30 is/are withdrawn from consideration.
- 5) Claim(s) 25 is/are allowed.
- 6) Claim(s) 23 and 24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 March 2000 is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Priority***

Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

The second application must be an application for a patent for an invention which is also disclosed in the first application (the parent or provisional application); the disclosure of the invention in the parent application and in the second application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ 2d 1077 (Fed. Cir. 1994).

In reviewing the prior patent applications and patents from which Applicant wishes to receive benefit of an earlier filing date under 35 USC 120, Examiner found discrepancies between disclosures. Examiner recommends that Applicant reviews all of the patent applications including 08/661903 and 08/485498 in particular.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is nowhere in the disclosure any mention of cam protrusions as stated in Lines 6-7 of Claim 24.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 23 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Estabrook et al (US 5,911,706). Estabrook et al discloses a port device for implanting in a patient for subcutaneous access comprising a housing having a needle receiving apparatus, lock means comprising a collet, and a lock member responsive to application of a cam means (Figures 1B-1D, 2A-2B; Figure below).

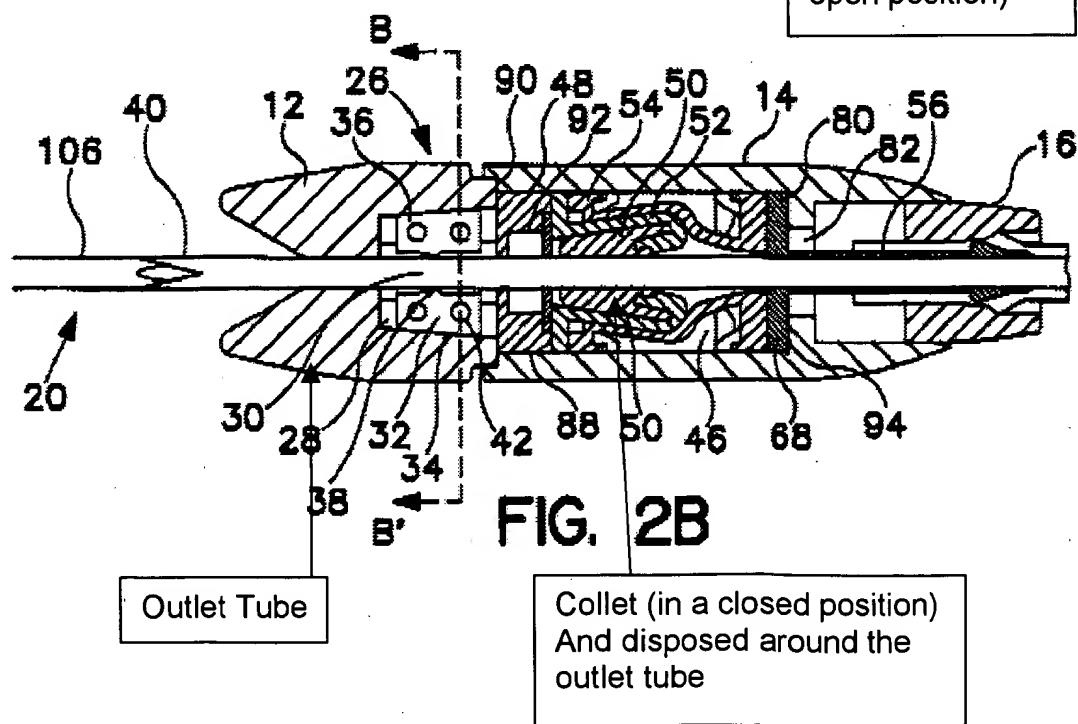
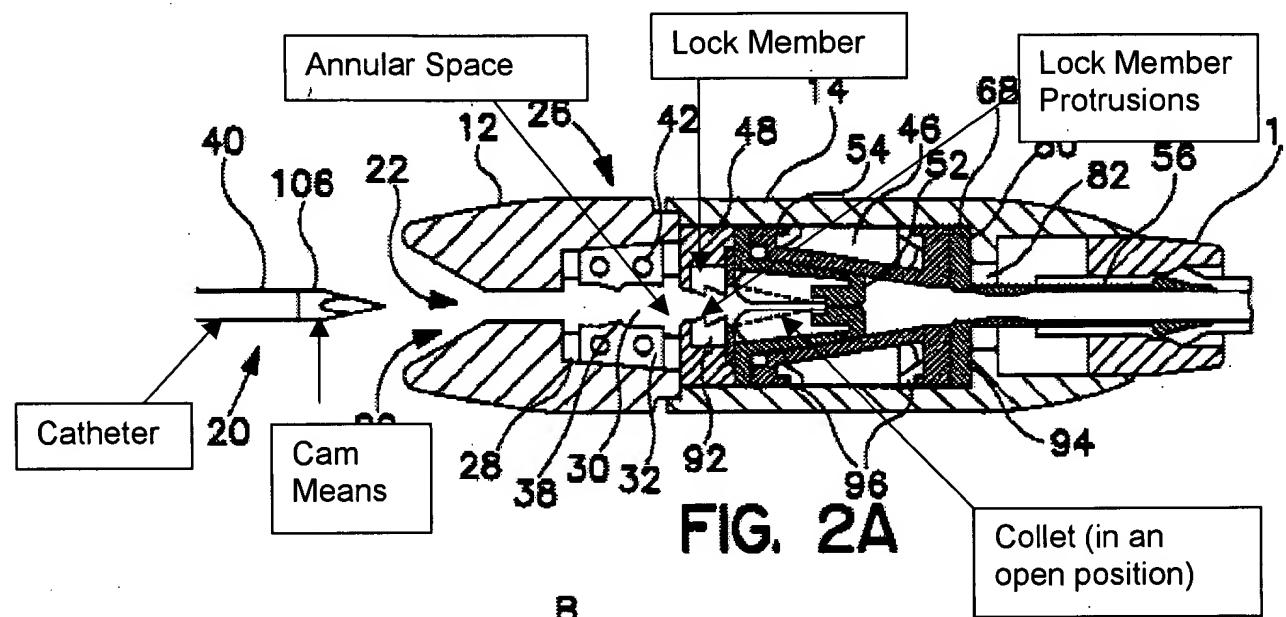
***Allowable Subject Matter***

Claim 25 is allowed.

***Response to Arguments***

Applicant's arguments filed on September 3, 2003, have been fully considered but they are not persuasive. Applicant states that Estabrook et al (5,911,706) is static and does not disclose a lock member having a cam means to open and close a collet so as to lock the catheter to the housing. Examiner respectfully disagrees. Firstly, the device of Estabrook is not static. Clearly, Figures 2A and 2B illustrate that (50) is indeed moving from one configuration to another. Therefore, the device is not static, and does move at a certain time. Secondly, Applicant contends that the device of Estabrook does not have a lock member having a cam means. Examiner would like to point out that nowhere in the claims does it mention that the lock member has cam means. To the contrary, Claim 23 recites that the lock member need only be responsive to application of a cam means. Examiner interprets this to mean that the cam means can belong to any structure, as long as there is a cam means, and as long as the lock member is responsive to it. Claim 24 mentions that the lock member has inwardly directed cam protrusions. Again, the claimed cam means is separate from the claimed cam protrusions. Examiner has provided below a labeled figure of the device of Estabrook with all of the claimed limitations of the instant application. For purposes of the rejection, Examiner uses the definition of cam found in the Merriam-Webster's Collegiate Dictionary Tenth Edition as meaning a rotatable or slid able piece. Thus, (106) of Estabrook, Figure 2A is the cam means, since it is a piece that can be rotated or slid. Examiner would also like to bring Applicant's attention to Page 8, Claim 24, Line

6 of the Amendment. Examiner contends Applicant's addition of the word "cam" in front of the word "protrusions." Firstly, there is nowhere in the specification any mention of the cam having protrusions. Secondly, since in Line 8 of Claim 24, there is recitation of the lock member protrusions, Examiner interprets that in Line 6 of Claim 24, the protrusions are indeed those of the lock member and not of the cam means.



***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

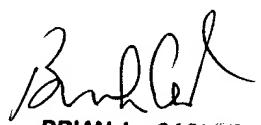
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn L Thompson whose telephone number is 703-305-3286. The examiner can normally be reached on 8:30 AM - 6:00 PM: 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

KLT

KLJ

  
BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700